

DEWEY & LEBOEUF LLP
Barbara A. Caulfield (bcaulfield@dl.com)
Peter E. Root (proot@dl.com)
1950 University Avenue, Suite 500
East Palo Alto, California 94303
Telephone: (650) 845-7000
Facsimile: (650) 845-7333

DEWEY & LEBOEUF LLP
1101 New York Avenue, N.W., Suite 1100
Washington, DC 20005
Telephone: (202) 346-8000
Facsimile: (202) 346-8102

DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, New York 10019
Telephone: (212) 259-8000
Facsimile: (212) 259-6333

Attorneys for Plaintiff
Brocade Communications Systems, Inc.

(Additional Counsel shown on signature page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE BROCADE COMMUNICATIONS
SYSTEMS, INC. DERIVATIVE
LITIGATION**

This Document Relates to:

ALL ACTIONS

Case No. C 05-02233 CRB

**STIPULATION AND ~~[PROPOSED]~~
ORDER EXTENDING DEADLINE
FOR PLAINTIFF TO RESPOND TO
COUNTERCLAIMS**

Courtroom: 8, 19th Floor
THE HONORABLE CHARLES R. BREYER

STIPULATION & [PROPOSED] ORDER
EXTENDING DEADLINE
C 05-02233 CRB

STIPULATION

WHEREAS, Brocade Communications Systems, Inc. (“Brocade”), by and through the Special Litigation Committee (“SLC”) of Brocade’s Board of Directors, filed a Second Amended Complaint (“SAC”) in this action on August 1, 2008, against ten defendants (Dkt. No. 220);

WHEREAS, on October 6, 2008, each of the ten defendants filed a motion to dismiss the SAC;

WHEREAS, in a December 12, 2008 Order (Dkt. No. 375) (and as further discussed in a January 6, 2009 opinion (Dkt. No. 377)), the Court dismissed all claims in the SAC against five defendants and allowed Brocade to proceed on certain claims against five other defendants:

Gregory Reyes, Neal Dempsey, Seth D. Neiman, Antonio Canova, and Robert D. Bossi;

WHEREAS, defendants Canova and Bossi each have entered into a settlement agreement with Brocade, and Brocade has filed motions for approval of the settlements and entry of contribution bar orders (Dkt. Nos. 393, 402);

WHEREAS, Brocade and the remaining defendants – Reyes, Dempsey, and Neiman –are engaged in discussion on procedures for a referral of this case to binding arbitration;

WHEREAS, two of the remaining defendants, Neiman and Dempsey, filed counterclaims together with their answers to the SAC (Dkt. Nos. 383, 387) (the “Counterclaims”);

WHEREAS, under the Federal Rules of Civil Procedure, Brocade’s answer or other response to the Counterclaims is due February 12, 2009;

WHEREAS, in view of the parties’ ongoing discussion regarding a referral of this case to arbitration, Brocade and defendants Neiman and Dempsey respectfully request that this Court extend by two weeks Brocade’s deadline to answer or otherwise respond to the Counterclaims.

IT IS HEREBY STIPULATED by and between Brocade and defendants Neiman and Dempsey, subject to this Court’s approval, that Brocade’s deadline to answer or otherwise respond to the Counterclaims shall be extended to and including February 26, 2009.

1 Dated: February 12, 2009

DEWEY & LEBOEUF LLP

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3 /s/ Peter E. Root

4 Peter E. Root

5 Attorneys For Plaintiff
6 Brocade Communications Systems, Inc.

7
8 Dated: February 12, 2009

WILMER CUTLER PICKERING HALE &
DORR

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10 /s/ Jonathan A. Shapiro

Jonathan A. Shapiro

11 Attorneys For Defendant Seth D. Neiman

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13
14 Dated: February 12, 2009

K&L GATES LLP

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16 /s/ Jeffrey L. Bornstein

Jeffrey L. Bornstein

17 Attorneys For Defendant Neal Dempsey

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Peter E. Root, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Extending Deadline For Plaintiff To Respond To Counterclaims. In compliance with General Order 45.X.B., I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12th day of February 2009, at East Palo Alto, California.

/s/ Peter E. Root
Peter E. Root

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: Feb. 13, 2009

